

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
 v. ) CRIMINAL NO. 03-10387-DPW  
 )  
 EARL CHARLEY )

MOTION TO CONTINUE SENTENCING

Defendant, Earl Charley, hereby moves to continue the sentencing hearing in the above-entitled matter, presently scheduled for September 1, 2005, to a date convenient to the Court but no earlier than October 6, 2005. As reasons therefore, counsel states the following:

1. The Probation Department conducted its investigation and issued a draft Presentence Report on July 28, 2005.
2. Both parties timely objected to various aspects of the Presentence Report. The Probation Department has been researching its response to the parties' objections and issued its final Presentence Report late today.
3. The Probation Department earlier this day orally disclosed its position concerning the objected-to matters and indicated it would agree with defendant's position concerning those objections.
4. The Probation Department, however, for the first time today also indicated it was sua sponte changing its position as to an entry in defendant's criminal record. That change in position will result, according to the Probation Department, in defendant being deemed an Armed Career Criminal subject to a fifteen-year mandatory minimum sentence. See 18 U.S.C. § 924(e). Defendant would otherwise be facing an advisory guideline sentencing range of 70-87 months.
5. Defendant, otherwise ready for the sentencing hearing to go forward, will be unable to respond by the Probation Department's sua sponte change in its

recommendation without additional factual and legal research into the issue. Counsel for defendant will be unable to conduct this research in a timely enough manner to permit the filing of a sentencing memorandum in advance of the hearing as required by the Court.

6. Defendant therefore requests a continuance of the sentencing hearing in order to review the Probation Department's position, conduct investigation, and submit a response.
7. The Speedy Trial Act does not apply to this Motion as defendant has already pled guilty.
8. Counsel unsuccessfully attempted to contact the government, by and through Assistant U.S. Attorney Christopher Bator, to gain his assent to this motion.

EARL CHARLEY  
By his attorney,

/s/ Timothy G. Watkins  
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